



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 10-20
	)	(Enforcement-Water)
MONTALBANO BUILDERS, INC., an Illinois	)	
Corporation,	)	
	)	
Respondent.	)	

**MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT *INSTANTER***

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and moves the Board for leave to file its Second Amended Complaint *instanter*. In support thereof, Complainant states as follows:

1. On September 8, 2009, Complainant initiated this action on with the filing of its Complaint, which named only one Respondent, Montalbano Builders, Inc. ("Montalbano"), concerning its development of a site in Cortland, Kane County, Illinois ("Site").
2. On August 3, 2011, Complainant filed its First Amended Complaint with the Board, naming two additional Respondents to this action, specifically, First American Properties, LLC ("First American") and MBC XIV, LLC ("MBC"). Complainant's prior counsel did not seek the Board's leave prior to filing its First Amended Complaint.
3. On February 7, 2013, upon the retirement of the Complainant's prior counsel, the undersigned counsel entered his appearance in this case. In the course of reviewing the docket in this case, the undersigned counsel determined that neither First American nor MBC had ever been served with the First Amended Complaint.

4. On May 2, 2013, as directed by the Board's order of March 21, 2013, Complainant filed its Motion to Withdraw its First Amended Complaint. The Board has not ruled on that motion as of the date of the filing of the instant motion.

5. Since the filing of the Complaint, the People have ascertained that Respondent Montalbano no longer controls all portions of the Site and that control of the Site is currently controlled by four additional parties besides Montalbano, namely, MBC XIV, LLC, Cortland-I-88, LLC, RB Resolution Properties, LLC, and Douglas J. Johnson. There continue to be violations of the Environmental Protection Act and the Board Water Pollution Regulations throughout the Site and on portions of the Site controlled by each of the aforementioned parties.

6. The Attorney General proposes to add MBC XIV, LLC, Cortland-I-88, LLC, RB Resolution Properties, LLC, and Douglas J. Johnson as new Respondents to this action on her own motion.

7. The addition of these four additional respondents to this action will not result in any delay to the resolution of this action. Indeed, by adding these additional Respondents to this pending action, the Board will be able to fully address all current violations at the Site.

8. Attached to this Motion is the People's proposed Second Amended Complaint. Complainant requests leave to file the Second Amended Complaint *instanter*.

WHEREFORE, Complainant respectfully requests that the Board grant its motion and to deem its proposed Second Amended Complaint to be filed *instanter*.

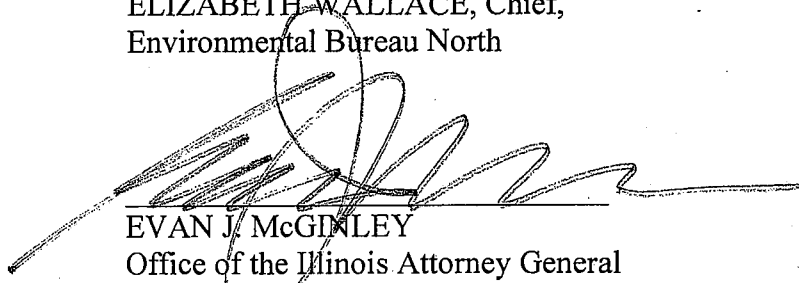
Respectfully Submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN, Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief,  
Environmental Enforcement/Asbestos  
Litigation Division

ELIZABETH WALLACE, Chief,  
Environmental Bureau North

A handwritten signature in black ink, appearing to read 'Evan J. McGinley', is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

EVAN J. MCGINLEY  
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**THIS FILING SUBMITTED ON RECYCLED PAPER**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 MONTALBANO BUILDERS, INC., an Illinois )  
 corporation, CORTLAND-I-88, L.L.C., )  
 an Illinois limited liability company, and )  
 MBC XIV, LLC, a revoked Delaware limited )  
 liability company, RB RESOLUTION )  
 PROPERTIES, LLC, an Illinois limited liability )  
 company, and DOUGLAS J. JOHNSON, )  
 an individual, )  
 )  
 Respondents. )

PCB No. 10-20  
(Enforcement-Water)

**SECOND AMENDED COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, files this Second Amended Complaint against Respondents, MONTALBANO BUILDERS, INC., an Illinois corporation, CORTLAND-I-88, L.L.C., an Illinois limited liability company, MBC XIV, LLC, a revoked Delaware limited liability company, RB RESOLUTION PROPERTIES, LLC, an Illinois limited liability company, and DOUGLAS J. JOHNSON, an individual, as follows:

**COUNT I**

**CAUSE, THREATEN OR ALLOW WATER POLLUTION**

1. The Complaint against Montalbano Builders, Inc. is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency

("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2012).

2. The Complaint against MBC XIV, LLC, CORTLAND-I-88, LLC, RB RESOLUTION PROPERTIES, LLC, and DOUGLAS J. JOHNSON, is brought on behalf of the People of the State of Illinois by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion.

3. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2012), and charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged with the duty to abate violations of the National Pollutant Discharge Elimination System ("NPDES") Permit Program under the Federal Clean Water Act ("CWA"), 33 U.S.C. §1342(b)(7).

4. At all times relevant to the Second Amended Complaint, Montalbano Builders, Inc. ("Montalbano"), was an Illinois corporation. On information and belief, Montalbano was involuntarily dissolved by the Illinois Secretary of State on September 9, 2011.

5. At all times relevant to the Second Amended Complaint, Respondent Cortland-I-88, L.L.C. ("Cortland"), has been an Illinois limited liability corporation.

6. At all times relevant to the Second Amended Complaint, Respondent MBC XIV, LLC ("MBC XIV"), has been a Delaware limited liability corporation, whose right to do business within the State of Illinois was revoked by the Illinois Secretary of State.

7. At all times relevant to the Second Amended Complaint, Respondent RB Resolution Properties, LLC ("RB Resolution Properties"), has been an Illinois limited liability corporation.

8. At all times relevant to the Second Amended Complaint, Respondent Douglas J. Johnson ("Johnson"), has been a resident of the State of Illinois who resides at 1811 West Forestview Drive, Sycamore, DeKalb County, Illinois.

9. At all times relevant to the Second Amended Complaint, Respondent Montalbano was engaged in the development of a 378-lot residential subdivision known as Mission Oaks, composed of both single family and duplex homes, on 187 acres of land, which is located on the south side of Route 38 East, near the intersection of Route 38 and Hahn Drive, in Cortland, DeKalb County, Illinois ("Site"). In 2006, on a date better known to Respondent Montalbano, Montalbano commenced grading work and other activities at the Site.

10. The Union Ditch, a drainage ditch, which is located off site, receives runoff from a large detention pond which is located at the southeast corner of the Site ("Detention Pond"). Stormwater which is generated onsite flows into the storm sewer inlets located at the Site, where the storm water then enters the Site's storm sewer system, which then conveys the collected stormwater into the Detention Pond. The stormwater which is collected in the Detention Pond is ultimately discharged into the Union Ditch.

11. As of the date of the filing of this Second Amended Complaint, while grading and excavating work has been completed for most, if not all, of the Site, only 18 homes have been constructed and the balance of the Site has neither been developed nor have the graded portions of the Site achieved final stabilization. Also as of the date of the filing of this Second Amended Complaint, no development or construction activities are currently being conducted at the Site.

12. On information and belief, Respondent Montalbano was initially the owner of the entire Site. On further information and belief, on dates better known to the Respondents,

Respondent Montalbano either conveyed portions of the Site to Respondents MBC XIV, Cortland, RB Resolution, and Johnson; or, Respondents MBC XIV, Cortland, RB Resolution, and Johnson otherwise obtained their portions of the Site through means better known to the Respondents.

13. Based on property records maintained by the DeKalb County Assessor, Respondent Montalbano is and has been, beginning on a date better known to Montalbano, the owner of certain parcels of real property located at the Site, including but not limited to, the following parcels of property, which are identified in the DeKalb County Assessor's records as Parcel Numbers 0928351014, 0928351015, 0928351016, 0928352001, and 0933128030. Also on information and belief, Respondent Montalbano owns approximately 119 vacant, graded lots on which single family homes were to be built. These lots are located within two separate portions of the Site. The first group of vacant, graded lots is bounded by East Stratford Avenue to the north, South Preston Street to the west, East Lexington Avenue to the south, and South Hampstead Street to the east. The second group of vacant, graded lots is bounded by East Lexington Avenue to the north, South Greenbrier Street to the west, East Fairview Drive to the south, and South Braxton Drive to the east.

14. Based on property records maintained by the DeKalb County Assessor, Respondent Cortland is and has been, beginning on a date better known to Cortland, the owner of certain parcels of real property located at the Site, which are identified in the DeKalb County Assessor's records as Parcel Numbers 0928351006, 0928351011, 0928351013, and 093310007.

15. Based on property records maintained by the DeKalb County Assessor, Respondent MBC XIV is and has been, beginning on a date better known to MBC XIV, the



owner of approximately 96 parcels of real property located at the Site, which are located in the area bounded on the south, by the south side of Ashford Drive, on the north by the south side of East Fairview Drive, on the west, by west side of South Greenbrier Street, and on the east by the east side of South Braxton Street.

16. Based on property records maintained by the DeKalb County Assessor, Respondent RB Property Solutions is and has been, beginning on a date better known to RB Property Solutions, the owner of that certain parcel of real property which is identified in the DeKalb County Assessor's records as Parcel Number 0933100009.

17. Based on property records maintained by the DeKalb County Assessor, Respondent Johnson is and has been, beginning on a date better known to Johnson, the owner of that certain parcel of real property located at the Site, which is identified in the DeKalb County Assessor's records as Parcel Numbers 0933181015.

18. On June 19, 2006, Montalbano submitted to the Illinois EPA a notice of intent ("NOI") for coverage under the NPDES stormwater permit for the Site. The receiving stream for stormwater runoff from the Site, as listed on Montalbano's NOI, is Union Ditch. Stormwater discharges at the Site discharge directly to a storm sewer and eventually flow into Union Ditch.

19. On July 19, 2006, the Illinois EPA granted Montalbano coverage under NPDES Permit No. ILR10F880 for stormwater discharges associated with construction activities at the Site ("Permit").

20. On May 9, 2008, an inspector with the DeKalb County Soil and Water Conservation District ("District") inspected the Site ("May 9<sup>th</sup> Inspection"). The purpose of the May 9<sup>th</sup> Inspection was to determine the effectiveness of the soil erosion and sediment control

measures which Respondent Montalbano was employing at the Site to prevent water pollution and to review Montalbano's compliance with the terms and conditions of the Permit.

21. At the time of the May 9<sup>th</sup> Inspection, the following conditions were present at the Site:

- a. Sediment was flowing out of the Detention Pond and into Union Ditch;
- b. The entire Site evidenced a lack of stabilization and erosion control measures;
- c. Severe bank erosion was occurring in the Detention Pond, primarily on the north bank of the pond;
- d. Sediment traps were not being maintained; and
- e. Stormwater channels at the Site had not been stabilized.

22. On May 14, 2008, an inspector from Illinois EPA conducted an inspection of the Site ("May 14<sup>th</sup> Inspection"). The purpose of the May 14<sup>th</sup> Inspection was to observe the erosion control measures being employed by Respondent Montalbano at the Site.

23. At the time of the May 14<sup>th</sup> Inspection the following conditions were present at the Site:

- a. the Site was in very poor condition with areas which had been subjected to mass grading having been left unstabilized;
- b. The Detention Pond was carrying a heavy sediment load as evidenced by the sandy color of the water and sediment that was building up and fanning out at the inlet;
- c. There was severe erosion to the bank of the Detention Pond in the area of the western inlet; and
- d. Effluent was flowing from the Detention Pond and discharging into Union Ditch as evidenced by the visible sediment plume in the ditch.

24. On November 3, 2008, an Illinois EPA inspector conducted another inspection of the Site ("November 3<sup>rd</sup> Inspection"). The purpose of the November 3<sup>rd</sup> Inspection was to observe the erosion control measures being employed by Respondent Montalbano at the Site.

25. At the time of the November 3<sup>rd</sup> Inspection, the following conditions were present at the Site:

- a. No stabilization measures had been employed at the Site;
- b. Erosion of graded areas was occurring;
- c. Sediment and dirt was visible on streets throughout the Site;
- d. Sediment controls at the stormwater inlets throughout the Site were not being maintained, so that stormwater runoff and sediment from unstabilized areas could breach stormwater inlets on the Site; and
- e. Sediment and erosion control measures for the Detention Pond either had not been installed or were not being properly maintained, such that sediment from areas adjacent to the Detention Pond were being allowed to flow into the pond.

26. On July 13, 2009, the Illinois EPA conducted another inspection of the Site, in order to determine the overall compliance status of the Site ("July 13<sup>th</sup> Inspection").

27. At the time of the July 13<sup>th</sup> Inspection, the following conditions were present at the Site:

- a. A black corrugated stand pipe installed to prevent discharge from the Detention Pond had been punctured in several places and was allowing sediment-laden water to discharge into the Union Ditch;
- b. Sediment was being discharged from the Detention Pond into Union Ditch; and
- c. The water level in the Detention Pond was several feet lower than had been the case during prior Illinois EPA inspections of the Site.

28. On June 28, 2010, the Illinois EPA conducted another inspection of the Site to determine the overall compliance status of the Site ("June 28<sup>th</sup> Inspection").

29. At the time of the June 28<sup>th</sup> Inspection, , the following conditions were present at the Site:

- a. Inlet controls at the Site were in need of maintenance;
- b. Large portions of the Site had not been stabilized; and
- c. No information about the Permit was posted at the Site.

30. On May 24, 2012, Illinois EPA conducted another inspection of the Site ("May 24<sup>th</sup> Inspection"), in order to determine the overall compliance status of the Site.

31. At the time of the May 24<sup>th</sup> Inspection, , the following conditions were present at the Site:

- a. No construction activities were taking place at the Site, nor was any construction equipment present thereon;
- b. Soil on large portions of the site continued to be unstabilized; and,
- c. Inlet controls in the vicinity of Lexington and Hampstead Streets, which are located within the Site, were in disrepair and were failing.

32. On March 29, 2013, Illinois EPA and the District conducted an inspection of the Site ("March 29<sup>th</sup> Inspection"). The March 29<sup>th</sup> Inspection was undertaken for the purpose of determining the Site's current compliance status.

33. At the time of the March 29<sup>th</sup> Inspection:

- a. Large portions of the Site continued to be unstabilized, including the portions of the Site respectively owned by each of the Respondents;

- b. Additionally, at the time of March 29<sup>th</sup> Inspection, the Detention Pond showed signs of erosion and was in need of maintenance; and
- c. Gravel and dirt from unfinished and unpaved portions of the Site were visible on paved streets within the Site.

34. As of the date of the filing of this Second Amended Complaint, Respondent Montalbano continues to hold the Permit for the entire Site and therefore has the obligation to ensure compliance with the Permit.

35. Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

36. Section 3.315 of the Act, 415 ILCS 5/3.315 (2012), provides as follows:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision state agency or any other legal entity, or their legal representative, agent or assigns.

37. Respondents Montalbano, MBC XIV, Cortland, RB Resolution Properties, and Johnson are each a "person," as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2012).

38. Section 3.165 of the Act, 415 ILCS 5/3.165 (2012), provides as follows:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

39. The sediment which is generated by stormwater coming into contact with the graded and unstabilized portions of the Site is a "contaminant," as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2012).

40. Section 3.550 of the Act, 415 ILCS 5/3.550 (2012), provides as follows:

"WATERS" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State.

41. The Detention Pond and the Union Ditch into which the sediment discharges, each constitute "waters," as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2012).

42. Section 3.545 of the Act, 415 ILCS 5/3.545 (2012), provides as follows:

"WATER POLLUTION" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, or welfare, or domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

43. The sediment which is discharged into the Site's stormwater sewer system and which is discharged into the Detention Pond and, which ultimately discharges into the Union Ditch, creates "water pollution," as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2012).

44. By allowing disturbed soils at the Site to remain unstabilized and, further, by failing to implement adequate erosion control measures for the portions of the Site that each Respondent owns, the Respondents have caused, threatened or allowed the discharge of a contaminant into the waters of the State.

45. By causing, threatening or allowing sediment from the Site, a "contaminant," to eventually discharge into the Detention Pond and the Union Ditch, which are each a "water" of the State, each of the Respondents caused, threatened or allowed water pollution in Illinois, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against all Respondents with respect to this Count I:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);
3. Ordering Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against each Respondent for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) against each Respondent for each day of violation;
5. Ordering Respondents to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

**COUNT II**

**OFFENSIVE CONDITIONS**  
**(Alleged Against Respondent Montalbano Only)**

1-41. Petitioner realleges and incorporates by reference herein Paragraphs 1 through 41 of Count I as Paragraphs 1 through 41 of this Count II.

42. Section 302.203 of the Illinois Pollution Control Board ("Board") Water Pollution Regulations, 35 Ill. Adm. Code 302.203, titled, Offensive Conditions, provides as follows:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

43. Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105, provides as follows:

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard . . .

44. At the time of the May 14<sup>th</sup> and July 13<sup>th</sup> Inspections, sediment-laden water was flowing out of the Detention Pond and into the Union Ditch and thereby created offensive conditions in the Ditch, a water of the State, in violation of Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

45. By violating Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, Respondent Montalbano thereby also violated Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105.



46. By violating Sections 302.203 and 304.105 of the Board Water Pollution, 35 Ill. Adm. Code 302.303 and 304.105, Respondent Montalbano thereby also violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent Montalbano with respect to this Count II:

1. Authorizing a hearing in this matter at which time Respondent Montalbano will be required to answer the allegations herein;
2. Finding that Respondent Montalbano has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;
3. Ordering Respondent Montalbano to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent Montalbano for each violation of the Act and the pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondent Montalbano to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

**COUNT III**

**CREATING A WATER POLLUTION HAZARD**  
**(Alleged Against Respondent Montalbano Only)**

1-42. Complainant realleges and incorporates by reference herein paragraphs 1 through 34 and 36 through 43 of Count I as paragraphs 1 through 42 of this Count III.

43. Section 12(d) of the Act, 415 ILCS 5/12(d) (2012), provides as follows:

No person shall:

\* \* \* \*

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

44. By grading the Site and moving the soil thereon without implementing adequate erosion control for graded portions of the Site, and by allowing unstabilized soils to remain in areas of the Site prone to runoff to waters of the State, Respondent Montalbano thereby created a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order in favor of Complainant and against Respondent Montalbano with respect to this Count III:

1. Authorizing a hearing in this matter at which time Respondent Montalbano will be required to answer the allegations herein;
2. Finding that Respondent Montalbano has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2010);
3. Ordering Respondent Montalbano to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2012);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent Montalbano for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Respondent Montalbano to pay all costs including attorney, expert witnesses and consultant fees expended by the State in its pursuit of this action; and

6 Granting such other relief as the Board deems appropriate and just.

**COUNT IV**

**FAILURE TO COMPLY WITH THE TERMS  
AND CONDITIONS OF THE NPDES PERMIT  
(Alleged Against Respondent Montalbano Only)**

1-42. Complainant realleges and incorporates by reference herein paragraphs 1 through 34 and 36 through 43 of Count I as paragraphs 1 through 42 of this Count IV.

43. Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), provides as follows:

No person shall:

\* \* \* \*

(f) Cause, threaten, or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, any waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

44. Part IV.D.2(a) of Montalbano's Permit provides, in pertinent part, as follows:

"... stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the

construction activity in that portion of the site has temporarily or permanently ceased.”

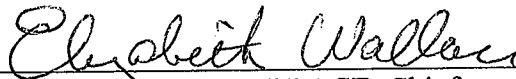
45. At the time of the May 9<sup>th</sup>, May 14<sup>th</sup>, November 3<sup>rd</sup>, July 13<sup>th</sup>, June 28<sup>th</sup>, May 24<sup>th</sup>, and March 29<sup>th</sup> Inspections, portions of the Site remained dormant for more than 21 days and had not been stabilized within 14 days as required by the Permit. By failing to maintain adequate stormwater pollution prevention measures as required by the Permit, Respondent Montalbano thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of Complainant and against Respondent Montalbano with respect to this Count IV:

1. Authorizing a hearing in this matter at which time Respondent Montalbano will be required to answer the allegations herein;
2. Finding that Respondent Montalbano has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2012).
3. Ordering Respondent Montalbano to cease and desist from further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2012).
4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) per day against Respondent Montalbano for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2012).
5. Ordering Respondent Montalbano to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,  
by LISA MADIGAN, Attorney  
General of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

By:   
ELIZABETH WALLACE, Chief  
Environmental Bureau North  
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**CERTIFICATE OF SERVICE**

I, EVAN J. MCGINLEY, do hereby certify that, on May 15, 2013, I caused to be served on the individuals listed below, by first class mail, a true and correct copy of the Complainant's Motion for Leave to File Second Amended Complaint *Instanter* and notice of motion.

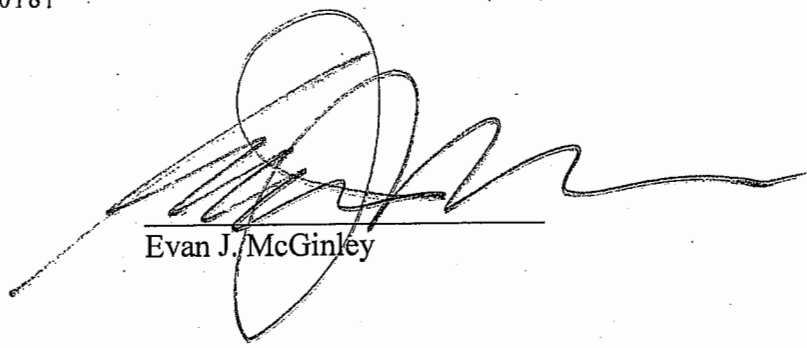
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A handwritten signature in black ink, appearing to read 'Evan J. McGinley', is written over a horizontal line. The signature is stylized and cursive.

Evan J. McGinley